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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/574,170	01/10/2007	Bruno Bozionic	2003P1352WOU'S	4107
22116 7590 06/22/2010 SIEMENS CORPORATION INTELLECTUAL PROPERTY DEPARTMENT 170 WOOD AVENUE SOUTH ISELIN, NJ 08830				
EXAMINER				
MAL, KEVIN S				
ART UNIT		PAPER NUMBER		
2456				
MAIL DATE		DELIVERY MODE		
06/22/2010		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No. 10/574,170	Applicant(s) BOZIOONEK ET AL.
Examiner KEVIN S. MAI	Art Unit 2456

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 17 June 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 24-29, 31-34, 44-52 and 54.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Rupal D. Dharia/
Supervisory Patent Examiner, Art Unit 2400

/K. S. M./
Examiner, Art Unit 2456

Continuation of 11, does NOT place the application in condition for allowance because: Applicant's arguments are not persuasive. Applicant argues that Albuquerque does not disclose bandwidth testing. Applicant has argued that continuous monitoring is not testing. However examiner disagrees, regardless of the monitoring going on continuously it is nonetheless being tested. Then as to what is done to cause the reporting of the link speed, paragraph [0066] explains that the BM evaluates the flows on the link to verify that the flows are still able to be transmitted in the available time of the frame. It is noted that while applicant implies that the claim contains a limitation discussing a cause, it is actually only contained in the preamble, and the method simply claims triggering a bandwidth test.

Applicant argues that Albuquerque does not disclose bandwidth requests sent to terminals. Examiner disagrees. Paragraph [0032] discloses the AC system determines link speed, and it's reasonable to say such a determination would occur via a request. Thus it is seen there is support and it would not go against the principle operation.

Applicant further argues the art does not disclose registering bandwidth of each connection after each hop. Examiner disagrees. Paragraph [0032] discloses the AC system determines link speed and this is seen to be done for the network and accordingly since all connections are determined then all connections after hops are registered.

Applicant further argues that the art does not disclose assembly of data. Examiner disagrees. The AC system provides for communication control over the links as well as determining link speed, accordingly it is seen that the network as a whole is considered and as such the data was assembled.

Applicant's arguments with respect to claim 48 are the same as those used previously and have been addressed in the previous office action dated 4/20/10

Applicant's arguments with respect to claim 54 are the same as those used previously and have been addressed in the previous office action dated 4/20/10. It is noted that applicant states that paragraph [0044] does not support examiners assertions. Examiner disagrees. The cited portion continues to say "or to transmit on a best-effort mode obtaining bandwidth when available.